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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

LAURIE MARIE LASKEY, Plaintiff and Appellant, v. SUN MICROSYSTEMS, INC., Defendant and Respondent.	A123798 (Sonoma County Super. Ct. No. SCV-242054)

Laurie Marie Laskey filed a complaint in propria persona for personal injury and identity theft against Sun Microsystems, Inc. (Sun). Sun demurred to her complaint, and the lower court sustained the demurrer with leave to amend on the grounds that all of her claims were time-barred. Subsequently, Laskey filed a first amended complaint (FAC). The trial court found that Laskey's FAC did not cure the defect and sustained Sun's demurrer to the FAC without leave to amend. The judgment of dismissal was filed on December 26, 2009. Laskey appeals, and we affirm the judgment.

BACKGROUND

On December 26, 2007, Laskey filed a complaint for personal injury and identity theft against Sun. She alleged causes of action for general negligence, intentional tort, and products liability. She also alleged a cause of action for "computer crimes, identity theft, products liability, FCC violations, technical violations, code violations, split tunneling, etc." Under her general negligence and products liability claims, Laskey asserted that the injury occurred on February 11, 2001. She alleged the following in her

claim for general negligence: Sun "has a faulty system and is not in compliance with RFC1918. A faulty system creates faults and I was injured because of it. Sun . . . allows for identity theft. Emails should be routed via mail servers (mx), routers and filters not someone's computer. [¶] This could be a class action suit, since my friend emailed me from Sun . . . and it's a faulty system the possibility exists."

On February 21, 2008, Sun demurred to the complaint on the bases that it was fatally uncertain under Code of Civil Procedure section 430.10, subdivision (f) and the statute of limitations barred all of the causes of action. Laskey filed no opposition and on August 13, 2008, the lower court sustained Sun's demurrer with leave to amend.

Laskey filed her FAC on August 19, 2008. She set forth claims for general negligence, intentional tort, products liability, and premises liability. She also included a claim for "unfair business practice, breach of contract, mass tort, etc." She again stated that her injury occurred on February 11, 2001, under her general negligence claim. She stated that she suffered wage loss, loss of use of property, hospital and medical expenses, general damage, property damage, loss of earning capacity, and "other damage" described as "loss of use of credit, emotional distress, anxiety disorder, cost of discovery, identity theft, phone fraud, security breach, etc."

On September 19, 2008, Sun filed a demurrer to Laskey's FAC on the grounds that all of Laskey's causes of action were time-barred and fatally ambiguous, unintelligible, and uncertain. Laskey filed an untimely one-page opposition on October 27, 2008.

On November 14, 2008, the trial court sustained Sun's demurrer without leave to amend. The court ruled that the FAC "does not show that the complaint can be amended to overcome the bar of the statute of limitations." The judgment of dismissal was filed on December 26, 2009.

Laskey filed a notice of appeal on December 29, 2008.

DISCUSSION

I. *Standard of Review*

The standard of review governing an appeal from the judgment after the trial court sustains a demurrer without leave to amend is well established. " 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff. [Citation.]" (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Additionally, we note that Laskey is in propria persona, but a party appearing in propria persona "is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys." (*Barton v. New United Motor Manufacturing, Inc.* (1996) 43 Cal.App.4th 1200, 1210.) " '[T]he in propria persona litigant is held to the same restrictive rules of procedure as an attorney.' " (*Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1125-1126; accord, *First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 958, fn. 1.)

II. *Failure to Designate an Adequate Record for Appeal*

Sun argues that Laskey has failed to meet her burden of demonstrating error in the trial court's order because she did not provide this court with an adequate record. (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.) In particular, she did not include her FAC even though she is appealing the court's ruling on this pleading.

When the appellant fails to supply an appellate record sufficient for meaningful review, "the appellant defaults and the decision of the trial court should be affirmed."

(*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1051, fn. 9; accord, *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296; *Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.) In the present case, however, Sun has provided us with the FAC as an exhibit to its brief. We therefore have an adequate record before us to decide Laskey's appeal on its merits.

III. *Defective Briefs*

Sun urges us to dismiss Laskey's appeal because the briefs she filed in this court are defective. Sun points out that Laskey fails to articulate any pertinent legal argument. (See, e.g., *Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368.) Failure to articulate any pertinent legal argument may be deemed a waiver or abandonment of the appeal. (See, e.g., *In re Sade C.* (1996) 13 Cal.4th 952, 994.) Laskey also refers to several federal statutes without explaining their relevance. (See, e.g., *Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979 [" 'This court is not required to discuss or consider points which are not argued or which are not supported by citation to authorities or the record' "].) Finally, Laskey neglects to provide citations to the record as mandated by California Rules of Court, rule 8.204(a)(1)(C). (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 [appellate court is not required to search record on its own].)

Although we could dismiss Laskey's appeal for failing to set forth in her briefs in this court any pertinent legal argument or citations to the record, we will consider the appeal on its merits.

IV. *Statute of Limitations*

All of Laskey's causes of action in her FAC were based on personal injuries that she allegedly suffered on February 11, 2001. Laskey filed her original complaint on December 26, 2007. Thus, she filed her complaint more than six years after she suffered her injury.

Statutes of limitations begin to run when a cause of action accrues. (Code Civ. Proc., § 312 ["Civil actions, without exception, can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued"]; *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397 (*Norgart*).) Generally speaking, a cause of action

accrues at "the time when the cause of action is complete with all of its elements." (*Norgart, supra,* at p. 397.) Here, as already emphasized, Laskey stated that the injury occurred on February 11, 2001.

All of Laskey's claims that were based on a personal injury fall under the two-year statute of limitations under Code of Civil Procedure section 335.1.[1] Any claims of fraud and injury to property are governed by the three-year statute of limitations under Code of Civil Procedure section 338. To the extent Laskey has alleged a breach of contract claim, the four-year statute of limitations set forth in Code of Civil Procedure section 337 applies. Similarly, her unfair business claim has a four-year limitations period. (Bus. & Prof. Code, § 17208.)

Under the longest statute of limitations of four years, the time for Laskey to file her lawsuit elapsed on February 11, 2005, four years after she admitted suffering her injury. She filed her original complaint beyond that date on December 26, 2007. Thus, the trial court properly found that the statute of limitations had run on all of her claims.

There are, however, exceptions to the general rule that the claim accrues at the time of injury. One such exception, the discovery rule, postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action. (*Norgart, supra,* 21 Cal.4th at p. 397.) A plaintiff has reason to discover a cause of action when he or she "has reason at least to suspect a factual basis for its elements." (*Id.* at p. 398.) Under the discovery rule, suspicion of one or more of the elements of a cause of action, coupled with knowledge of any remaining elements, will generally trigger the statute of limitations period. (*Id.* at p. 398, fn. 3.)

Laskey needed to plead the following facts to show the application of the discovery rule: " ' "(1) the time and manner of discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence." [Citation.] In assessing the sufficiency of the allegations of delayed discovery, the court places the burden on the

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[1] Code of Civil Procedure section 335.1 provides that the time for commencing an action is within two years for an action for the injury to "an individual caused by the wrongful act or neglect of another."

plaintiff to "show diligence"; "conclusory allegations will not withstand demurrer." ' " (*Grisham v. Philip Morris U.S.A., Inc.* (2007) 40 Cal.4th 623, 638.) Under her general negligence claim, she plead that she was "within the statute of limitations because of the security breach and/or investigation." This conclusory assertion is insufficient to invoke the delayed discovery rule, especially since she admitted in her pleading that she suffered the injury on February 11, 2001.

Further, in her brief in this court, Laskey does not provide any information about when she discovered the injury or any reason for failing to discover the injury earlier despite reasonable diligence. Rather, she simply states in her opening brief: "Plaintiff also suffers from delayed discovery realization. Defendant told plaintiff other facts to mislead plaintiff and prevent plaintiff from discovering the concealed or suppressed facts. Plaintiff was induced to further discovery. The doctrine of equitable tolling and estoppels applies." These conclusory statements are insufficient to show that the discovery rule applies.

Finally, in her opening brief in this court, Laskey makes a passing reference to the doctrines of equitable tolling and equitable estoppel. These doctrines also may toll the statute of limitations.

"[T]he three elements of equitable tolling are '(1) that defendant received timely notice in pursuing the first remedy, (2) there is a lack of prejudice to the Defendant in gathering evidence to defend against the second action, and (3) there is good faith and reasonable conduct by plaintiff in filing the second action.' " (*Thomas v. Gilliland* (2002) 95 Cal.App.4th 427, 434.) In her pleadings and in her briefs in this court, Laskey makes no allegation that she pursued an alternate remedy in good faith and therefore this doctrine does not apply.

" ' "Four elements must ordinarily be proved to establish an equitable estoppel: (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had the right to believe that it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; and, (4) he must rely upon the conduct to his injury." ' " (*Spray,*

Gould & Bowers v. Associated Internat. Ins. Co. (1999) 71 Cal.App.4th 1260, 1268.) Other than allege in her opening brief in this court that equitable estoppel applies, Laskey alleges no facts that satisfy any of the elements of equitable estoppel. Indeed, she cannot allege such facts since she admitted that she was aware of the injury on February 11, 2001.

We conclude that all of Laskey's claims are time-barred as a matter of law and the lower court properly sustained Sun's demurrer against her FAC.

V. *Amending the Complaint*

After giving Laskey an opportunity to amend her original complaint, the trial court sustained Sun's demurrer against Laskey's FAC when she failed to cure the defect in her original complaint. We conclude that the lower court did not abuse its discretion in sustaining Sun's demurrer without leave to amend because there is no reasonable probability that the defects in the pleading can be cured by amendment.

As already discussed, Laskey cannot state a claim because the statute of limitations has run on all of her causes of action. In her brief in this court, Laskey seems to be arguing that she should be able to allege additional claims not set forth in her FAC. Specifically, she mentions fraud and violations of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1961(1); RICO) and the Computer Fraud Abuse Act (18 U.S.C. § 1030).[2] Even if she could set forth allegations to support these claims, they also are time-barred. A two-year statute of limitations applies to civil claims under the federal Computer Fraud Abuse Act. (18 U.S.C. § 1030(g).) The state fraud or mistake claims have a three-year statute of limitations. (Code Civ. Proc., § 338, subd. (d).) A civil federal RICO claim is subject to a four-year limitations period. (*Agency Holding Corp. v.*

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[2] She also asserts that Sun violated the "Patriot Act" and "U.S. Codes." It is not clear what exact statutes she is claiming Sun violated. With regard to any alleged violation of the Patriot Act, section 802 of the USA Patriot Act of 2001 added a new definition of "domestic terrorism" under title 18 of the United States Code section 2331(5). However, there is no case law or any basis for supporting the existence of a private cause of action for a plaintiff's claim of treason. (*Cooksey v. McElroy* (S.D. Ohio Sept. 24, 2008, No. 1:07CV581) 2008 WL 4367593, *23.)

Malley-Duff & Associates, Inc. (1987) 483 U.S. 143, 156.) As already stressed, since Laskey knew of the facts constituting her claims by February 11, 2001, even under the longest statute of limitations of four years, Laskey's claims expired on February 11, 2005, more than two years before she filed her complaint against Sun.

DISPOSITION

The judgment is affirmed. Sun is awarded costs.

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Lambden, J.

We concur:

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Kline, P.J.

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Richman, J.